

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
MAY 23, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, May 23, 2005 in the City Council Chamber of the Melvin Municipal Office Building, Greensboro, North Carolina, commencing at 2:05 p.m. The following members were present: Chair Hugh Holston, Sandra Anderson, Ann Buffington, John Cross, Rick Pinto and Janet Wright. Bill Ruska, Zoning Administrator and Blair Carr, Esq., from the City Attorney's Office, were also present

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method for appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Ms. Wright moved to approve the minutes of the April 25, 2004, as submitted, seconded by Mr. Pinto. The Board voted 6-0 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Pinto and Wright. Nays: None.)

Mr. Ruska was sworn in for evidence to be given by him on the requests before the Board today.

NEW BUSINESS

VARIANCE

A. BOA-05-19: 5600 GUIDA DRIVE. BILLIE JOE AND JEAN FORTSON REQUEST A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. VIOLATION: AN EXISTING PRIVACY FENCE EXCEEDS THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF THE DOLLEY MADISON ROAD RIGHT-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING RS-12, BS-164, CROSS STREET – DOLLEY MADISON ROAD. (DENIED)

Mr. Ruska stated that Billie Joe and Jean Fortson are the owners of the property located at 5600 Guida Drive. The lot is located at the northwestern intersection of Guida Drive and Dolley Madison Road on zoning map block sheet 164. The lot contains a single-family dwelling. The applicant has installed a privacy fence that exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Dolley Madison Road right-of-way. Zoning Enforcement received a complaint from a citizen that the owners had constructed a fence that was too tall. On April 1, 2005, the property owner was issued a Notice of Violation. Upon receipt of the Notice of Violation, the applicant contacted the zoning office and began their variance procedures. The lot is a corner lot. The applicant has stated that the additional height is needed to provide adequate privacy. In reference to Section 30-4-9.6(E)1) Measurements: "Fence height shall be measured at the highest point, not including columns or posts, of the fence section as measured from the grade on the side nearest the abutting property or street." The nearest portion of the fence is approximately 7 feet from the curb line adjacent to the Dolley Madison Road right-of-way. This side property line is approximately 138 feet in length. The applicant has kept the fence at least 30 feet from the intersection. Along with their application, the applicant included a letter from the Greensboro Department of Transportation that states the fence meets the City's current Sight Obstruction Ordinance and is not a hazard to motorists. The lot is currently zoned RS-12. The adjacent properties are also zoned RS-12. It appears that the fence is currently within the City Right-of-Way and would have to be moved back 3 or 4 feet, in any case.

Chair Holston asked if there was anyone wishing to speak on this matter.

Bill Fortson, 5600 Guida Drive, was sworn in and stated that the purpose of the fence is for a noise shield, especially for trucks traveling on Dolley Madison Road. The street is substantially higher than the residential property, making it more susceptible to noise levels. He submitted photographs depicting the elevation of the street and the residential property. He feels that there is a hardship because of the road elevation and increase in truck traffic and he has no control over that.

Donna Williams, 5601 Guida Drive, was sworn in and stated that she feels there is nothing wrong with this fence and it has been in place for 2 years and does not bother anyone. She does not have any problem with sight distance when backing out of her driveway.

P.Z. Durhan, 5604 Guida Drive, was sworn in and stated that he is 3 houses down from the applicant and they have been in their home since 1994 and have never had a problem with the shrubbery that was cut down nor the fence that has been built and in place for the past 2 years. He feels the fence is very attractive and it does not obscure the traffic flow. He hopes they can obtain the variance.

Joan Gray, 205 Dolley Madison Road, was sworn in and stated that she lives behind the Fortsons and her driveway is beside the end of their fence. She has never had a problem with seeing oncoming traffic with the fence being there. She is in favor of the variance.

There was no one to speak in opposition.

Ron Fields, Enforcement Officer, was sworn in and stated that he initially received a complaint on March 31st and visited the property and noted the violation.

Ms. Williams returned to the podium and stated that there are a lot of fences on Dolley Madison Road on the sides and fronts of houses along that road and they are as close as this one.

Mr. Cross moved that, in regard to BOA-05-19, 5600 Guida Drive, based on the stated findings of fact, the Zoning Enforcement Officer be upheld and the variance denied, based on the following: incorporate the facts as presented by staff and the information given by the applicant. The applicant has failed to show that but for the variance, he will not be able to make any reasonable use of his property, or that the hardship of which the applicant complains results from unique circumstances related to the applicant's property, seconded by Mr. Pinto. The Board voted 5-1 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Pinto. Nays: Wright.)

B. BOA-05-20: 1029 ALAMANCE CHURCH ROAD LINDLEY HEIGHTS, INC., REQUESTS A VARIANCE FROM AN INTERIOR SETBACK REQUIREMENT. VIOLATION: A PROPOSED RETAIL BUILDING WILL ENCROACH 20 FEET INTO A MINIMUM 20-FOOT INTERIOR SETBACK. TABLE 30-4-6-5, PRESENT ZONING- SC, BS-39, CROSS STREET – ROTHERWOOD ROAD. (DENIED)

Mr. Ruska stated that Lindley Heights Inc., is the owner of the property located at 1029 Alamance Church Road. The property is located on the north side of Alamance Church Road east of Martin Luther King Jr. Drive on zoning map block sheet 39. The lot is currently zoned SC. The applicant is requesting a variance from a minimum interior setback. A proposed retail building will encroach 20 feet into a 20-foot interior setback. The retail building is proposed to be located on the lot line. The property is approximately 4.983 acres. The tract contains 46,000 square feet of existing retail space. The proposed retail building will contain 4,250 square feet. The developer is proposing to relocate an existing sanitary sewer easement. The proposed building will not be built in any easement area. The adjacent properties located to the east and south are zoned SC and the adjacent properties located to the north and west are zoned HB.

Chair Holston asked if there was anyone wishing to speak on this matter.

Demetri Dascalakis, 130 Sunset Circle, was sworn in and stated that he had a site plan and photographs to submit for review. They propose to create an addition to the existing shopping center. This is a very high crime area within Greensboro and it is felt that the project plan will help eliminate this type of activity in this area. They hope to create a physical barrier to the rear of the building in the hopes that this will keep people from hanging out at the rear of the building.

Minas Dascalakis, 1600 Hobbs Road, was sworn in and stated that he and his son are just trying to protect the citizens of Greensboro and make a safe area for them and eliminate places for people to hide. They tried putting up fencing a few years ago and the fence only lasted about 2 ½ days.

No one spoke in opposition to the request.

Ms. Buffington moved that in regard to BOA-05-20, 1029 Alamance Church Road, the Zoning Enforcement Officer be upheld and the variance denied, incorporating the facts as presented by staff and the applicant, based on the following: if the applicant complies with the provisions of the ordinance he can make no reasonable use of his property, and that was not proven by the applicant and there is definitely going to be a building built there; it has not been shown that the hardship of which the applicant complains results from unique circumstances related to the property; seconded by Mr. Cross. The Board voted 5-1 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Pinto. Nays: Wright.)

APPEAL OF NOTICE OF VIOLATION

A. BOA-05-21: 401 PISGAH CHURCH ROAD KOURY CORPORATION APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE PLACEMENT AND USE OF A REAL ESTATE SIGN. SECTION 30-2-2.11 AND TABLE 30-5-5-1, PRESENT ZONING – CD-SC, BS-127, CROSS STREET – NORTH ELM STREET. (GRANTED)

Mr. Ruska stated that Koury Corporation is the owner of North Elm Village Shopping Center located at 401 Pisgah Church Road. The shopping center contains multiple tenants with Harris Teeter being the anchor tenant. The lot is located at the southeastern intersection of Pisgah Church Road and North Elm Street on zoning map block sheet 127. The property is currently zoned CD-SC. The zoning office received a complaint from a citizen about an illegally placed sign and a Notice of Violation was issued to the applicant on April 1, 2005. The applicant is appealing a Notice of Violation in reference to the placement and use of a real estate sign. Section 30-2-2.11 **Signs** states: *Real Estate Sign*. "Any sign displayed for the purpose of offering for sale, lease, or rent the property on which such sign is erected, affixed, or otherwise established." The sign is also considered to be an off-premise sign, which is prohibited in the SC zoning district. The sign advertises leasing space for The Village at North Elm. The Village at North Elm is the adjacent property to the east, which is a different zone lot that is currently under construction. The Village at North Elm is zoned CD-PDI and will contain a mixed use of office, retail, and residential. This property is also owned by Koury Corporation. Temporary real estate signs which are legally located in nonresidential districts are permitted to be a maximum of 12 feet tall and 100 square feet in area and may not contain any illumination. The overall height is approximately 9 feet and the area for the sign is 57 square feet. The sign is not illuminated; however, there is a street/parking lot light located nearby that casts light on the sign at night. The adjacent property located to the east is zoned CD-PDI, the adjacent properties located to the south are zoned RM-18 and CD-PDI, and the properties located on the north side Pisgah Church Road are zoned CD-LB and CD-GB.

Counsel Carr read specific guidelines that the Board must follow in making their decisions.

Chair Holston asked if there was anyone wishing to speak on this matter.

Dick Franks, representing Koury Corporation, was sworn in and stated that they felt that they had met the intent and the letter of the ordinance in putting up their sign. The only question was about the zone lot and they own both lots, the lot that the shopping center sign is displayed on and the adjacent lot. The purpose of the sign is to advertise their building for leasing opportunities.

Counsel Carr stated that she would try and clarify what the Board is being asked to interpret. She does not feel the applicant has an argument with the plain and ordinary meaning of the ordinance, and that is Real Estate Sign ~ One lot, One sign. The Board needs to determine if they are dealing with 2 lots or if their intent is to combine them as one development in the future, is it truly one lot. If it is 2 lots, then a real estate sign on the west lot advertising the east lot would be in violation of the ordinance. If the Board finds that it is 1 lot, then there are 2 signs.

Mr. Franks stated that he called the Code Enforcement section to get clarification and talked to Barry Levine and he stated that it fell under the definition of a billboard. He was not aware that a real estate sign fell under the definition of a billboard.

No one spoke in opposition to the request.

After some discussion Mr. Cross moved that in regard to BOA-05-21, 401 Pisgah Church Road, the Zoning Enforcement Officer be overruled and the interpretation granted in favor of the applicant, incorporating the facts as presented by staff and the applicant, based on the following findings of fact: that the Board interprets Section 30-2-2.11 to permit the sign in question due to it being located on a property with intersecting roadways, common name, common ownership and common project, thus the same property for which the sign is advertising: "Sale, Lease or Rent", of such property in this particular circumstance, and the fact that the properties are adjacent and they are connected and they have the intersecting roadways, driveways and in fact, when the project is completed, the people on the property will not have to get back onto the road to drive in and throughout the development, seconded by Ms. Wright. The Board voted 6-0 in favor of the motion. (Ayes: Anderson, Buffington, Holston, Pinto and Wright. Nays: None. Abstained: Cross)

TRAINING SESSION

Mr. Ruska stated that a training session is scheduled for July 28th between 11:00 am and 3:00 pm and it will be held in the Plaza Level Conference Room. Rich Ducker from the Institute of Government will conduct the training session.

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There being no further business before the Board the meeting was adjourned at 4:05 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/jd